

Message Text

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ACTION ARA-10

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E.O. 11652: N/A

TAGS: PFOR, PN

SUBJECT: FORTUNA III CASE: LEGAL DEVELOPMENTS

REF: PANAMA 5409

1. CANAL ZONE THIRD DISTRICT COURT HELD INCONCLUSIVE HEARINGS ON SEPTEMBER 9 ON THE FORTUNA III CASE. THE PROCEEDINGS DEALT EXCLUSIVELY WITH A SERVING MOTION (BY PLAINTIFF) TO SHOW CAUSE WHY THE EXECUTIVE SECRETARY OF THE COMPANY OWNING THE SHIP -- COMPANIA ATUNERA DEL PACIFICO S.A. -- SHOULD NOT BE HELD IN CONTEMPT. LAWYERS FOR PLAINTIFF HAD ATTEMPTED TO SERVE PROCESS THROUGH ATUNERA'S COUNSEL, WOODROW DE CASTRO BUT DE CASTRO OBJECTED ON GROUNDS THAT HE REPRESENTED THE CORPORATION AND NOT AN INDIVIDUAL. IN ADDITION, HE CLAIMED IT HAD NOT BEEN ESTABLISHED THAT THE EXECUTIVE SECRETARY WAS A DIRECTOR OR OFFICER OF THE COMPANY. AND FINALLY HE SAID THE METHOD OF SERVICE WAS IMPROPER SINCE IT HAD ONLY BEEN INITIATED THE DAY BEFORE THE HEARINGS AND THERE HAD BEEN INSUFFICIENT TIME TO DEAL PROPERLY WITH IT.

2. THE COURT QUASHED THE SERVICE OF PROCESS THROUGH DE CASTRO, BUT IT WOULD NOT QUASH THE MOTION TO HOLD
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OFFICERS OR DIRECTORS OF THE COMPANY IN CONTEMPT OF

THE COURT'S ORDERS THAT THE VESSEL BE RETURNED TO BALBOA. (IT WILL BE RECALLED THAT THE VESSEL PRESUMABLY VIOLATED THE COURT'S ORDER WHEN IT DEPARTED BALBOA WITHOUT PAYING BAIL OR OBTAINING COURT PERMISSION.)

3. PLAINTIFF ASKED FOR AND RECEIVED MORE TIME FROM THE COURT TO RESEARCH AND PREPARE DOCUMENTATION NECESSARY TO ESTABLISH THE IDENTITY OF THE CORPORATION'S OFFICERS. THE NEXT HEARING IS SCHEDULED FOR OCTOBER 6, WHEN THE JUDGE IS EXPECTED TO TAKE UP PLAINTIFF'S MOTION TO HOLD THE COMPANY AND/OR ITS OFFICERS IN CONTEMPT OF THE COURT'S ORDERS TO RETURN THE VESSEL TO THE ZONE.

4. THE COURT DID NOT DEAL WITH THE QUESTION OF THE COURT'S JURISDICTION OVER THE CASE, WHICH IS CHALLENGED BY DEFENDANTS. JUDGE GUTHRIE CROWE WAS OBVIOUSLY DISPLEASED THAT THE VESSEL LEFT ZONE WATERS IN VIOLATION OF A COURT ORDER, BUT ALSO EXPRESSED SEVERAL TIMES IN THE HEARING HIS RELUCTANCE TO ISSUE A COURT ORDER WHICH COULD NOT BE ENFORCED.

5. COMMENT: THIS CASE HAS DISAPPEARED FROM THE PRESS; BUT IT IS FAR FROM FORGOTTEN. THE AMBASSADOR AND EMBASSY OFFICERS HAVE BEEN APPROACHED ON IT MANY TIMES IN RECENT WEEKS BY FABIAN VELARDE, THE CHIEF OF GOVERNMENT'S INFORMATION ADVISER, AS WELL AS OTHERS CLOSE TO TORRIJOS. THE APPEAL HAS UNIFORMLY BEEN THAT THIS CASE COULD BE THE SOURCE OF CONSIDERABLE EMBARRASSMENT TO U.S.-PANAMANIAN RELATIONS AND THAT THE EMBASSY SHOULD "DO SOMETHING" TO RESOLVE IT. WE HAVE POINTED OUT THAT WE HAVE NO AUTHORITY TO INTERVENE IN SUCH JUDICIAL MATTERS.

6. THE OWNERS OF FORTUNA III ARE -- AS FAR AS WE KNOW -- GABRIEL LEWIS GALINDO, RODRIGO "RORY" GONZALEZ, JOSE LUIS SOSA, JAIME VALDES AND AMERICO QUINTERO. LEWIS AND GONZALEZ ARE CLOSE FRIENDS AND BUSINESS ASSOCIATES OF TORRIJOS. WHILE ANY PROCESS OR SUBPOENA ON THEM OR LIMITED OFFICIAL USE

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OTHER PERSONS ASSOCIATED WITH ATURNERA WOULD BE UNENFORCEABLE OUTSIDE OF THE ZONE, IT WOULD CLEARLY BE A SERIOUS SOURCE OF IRRITATION WITH THE GOVERNMENT. (SOME PANAMANIAN WHO HAVE SPOKEN WITH US HAVE SAID THAT THE GOP WAS "MORE FORTHCOMING" WHEN AMERICAN SHIPS WERE RECENTLY SEIZED HERE.)

7. VELARDE AND LEWIS HAVE TOLD US PRIVATELY THAT THE

UNAUTHORIZED DEPARTURE OF THE VESSEL WAS A STUPID
ACTION NOT APPROVED BY THE OWNERS. BUT THEY ADAMANTLY
CONTEST THE RIGHT OF A ZONE COURT TO DEAL WITH THE CASE
SINCE NO AMERICAN CITIZEN OR FINANCIAL INTERESTS ARE
INVOLVED AND THE INJURY OF THE PLAINTIFF TOOK PLACE
OUTSIDE OF U.S. JURISDICTION.
JORDEN

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